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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 09.05.2025

Judgment pronounced on: 28.07.2025

\+ **ARB. A. (COMM.) 5/2025, I.A. 1730/2025 & I.A. 1731/2025**

PAUL DEEPAK RAJARATNAM & ORS. .....Appellants

Through: Mr. Vivek Kohli, Sr. Adv. with Mr. S. Santanam Swaminadhan, Mr. Anindit Mandal, Mr. Kartik Malhotra, Ms. Vasudha Chadha, Advs.

versus

SURGEPORT LOGISTICS PRIVATE LIMITED & ANR. .....Respondents

Through: Ms. Rimali Batra, Mr. Abhishek Lalwani, Mr. K. Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

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1. This is an appeal filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (for brevity "*the Act*") challenging the order dated 16.12.2024 (for brevity "*the impugned interim award*") passed by the learned arbitrator under Section 17 of the Act in the arbitration matter titled as "*Surgeport Logistics Private Limited & Anr. v. Paul Deepak Rajaratnam &Anr.*".

FACTUAL MATRIX

2. The brief facts of the case as per the appellants are that the appellants No. 1 and No. 2 are seasoned professionals with approximately 25 years of experience in the logistics and freight forwarding industry. Appellant No. 1, an Indian citizen, was a former Director and minority shareholder of respondent No. 1, holding a 12% equity stake under the Shareholders' Agreement dated 28.04.2018 (for brevity "*the SHA*"), until his termination via a notice dated 25.07.2023. Similarly, appellant No. 2, a Sri Lankan citizen, was also a Director and minority shareholder of respondent No. 1 with a 12% equity share and was terminated by the same notice.

3. Appellant No. 3 is a partnership firm incorporated on 18.07.2018, engaged in various logistics services, such as shipping, freight forwarding, warehousing, packaging, distribution, national and international transportation, container freight station operations, customs clearance, supply chain management related services. The firm was formed by appellants No. 1 and No. 2 with the full knowledge and consent of the respondents to support the business expansion of respondent No. 1.

4. Respondent No. 1 is a joint venture company incorporated in 2017 by respondent No. 2 under the guidance of its Director, Mr. Yashpal Sharma. Mr. Yashpal Sharma has been central to the operations of the respondents and the relationship between the parties was fundamentally rooted in the trust and confidence the appellants placed in him.

5. In 2017, Mr. Yashpal Sharma approached appellants No. 1 and 2 to form a joint venture. He assured them that respondent No. 2 would provide financial and operational support, while the appellant No. 1 and 2 would handle sales and business development. Relying on these assurances and months of discussions that built trust, the appellants agreed to contribute their expertise. A joint venture company, respondent No. 1, was incorporated on 16.06.2017, with oral promises that appellants would initially hold 12% each in equity and eventually be elevated to 25% each.

6. Subsequently, on 28.04.2018, the SHA was prepared, but the appellants were neither given a draft nor allowed to review it before signing. They were never given a copy and only saw scanned signatures later. Despite this, they continued working based on mutual trust, as is common in the logistics industry. On 18.07.2018, appellants No. 1 and 2 formed appellant No. 3, a partnership firm, with the consent of Yashpal Sharma and respondent No. 2, to expand the business and serve the clients of respondent No. 1.

7. From 14.09.2018 to 22.05.2023, appellant No. 3 raised invoices totaling around Rs. 1.7 crores for services rendered to respondent No. 1. Despite this long-standing relationship, respondents later falsely

claimed ignorance of the existence of appellant No. 3 before 2019. On 07.01.2019, Mr. Yashpal Sharma even emailed stating that the appellant No. 3 was part of respondent No. 1 and could work seamlessly with it. In 2019, appellants issued client letters shifting operations to appellant No. 3 with the knowledge of the respondents, confirmed in board minutes dated 18.06.2022.

8. On 06.10.2019, the Board Meeting of respondent No. 1 acknowledged the value of appellant No. 3 and authorized invoice payments of appellant No. 3. By 2020, due to the efforts of the appellants, respondent No. 1 reported profits and increased budgets, which led to company wide salary hikes. From 2020 to 2023, appellant No. 3 continued engaging services of respondent No. 1 for its clients, with ongoing account reconciliations and encouragement from Mr. Yashpal Sharma. On 18.06.2022, a board meeting formalized the role of appellant No. 3 in customs and brokerage services and appellants were promised 10% of the net profits of respondent No. 1, though profit figures were never disclosed.

9. In 2022-2023, the appellants No. 1 and 2 demanded their promised increase in equity, which was persistently deferred. They later discovered siphoning of Rs. 4-5 crores from respondent No. 1 by respondent No. 2. On 06.06.2023, without a board meeting, respondents fabricated a resolution to initiate civil and criminal action against the appellants No. 1 and 2. The appellate No. 1 also instituted criminal proceedings against the respondents, which is pending investigation. This was followed by a Show Cause Notice on 07.06.2023, containing vague allegations and invoking non-compete

and non-solicit clause under Clause 15 of the SHA. Clause 15 reads as under:-

> *"15. **NON-COMPETE AND NON-SOLICIT OBLIGATIONS:***
>
> *1. Unless otherwise agreed by the party at the First Part, the Party at the Second Part and/or the Party at the Third Part shall not engage in any activity, directly or indirectly, in the same or relatively same business. The Party at the Second Part and the Party at the Third Part warrants that its subsidiaries and other firms or individuals over which it has control will comply with this requirement.*
>
> *2. Non compete clause to be implied with even after 3 years of the termination of Agreement business.*
>
> *3. In the event of non compliance of 1 and 2 above, the party at the Second Part and/or the Party at the Third Part shall be liable to compensate by way of penalty to the party at First Part with minimum amount of Rupee one crore and subject to maximum of loss suffered party at the First Part due to breach of agreement by the party at Second and/or Third Part."*

10. On 09.06.2023, the respondents escalated the matter by sending defamatory emails, cutting off email access of appellants and halting dues, including salaries and profit shares. Appellant No. 1 replied to the Show Cause Notice on 16.06.2023, denying allegations and reiterating their equity claim. A Termination Notice dated 25.07.2023 was issued, severing all ties with appellants No. 1 and 2, while falsely

accusing them of fund misappropriation. This notice, signed by Mr. Yashpal Sharma, was relied on by all parties.

11. Soon after, the respondents filed a petition under Section 9 of the Act in this Court, suppressing the Termination Notice and sought to restrain the appellants from engaging in competing business. On 03.08.2023, this Court issued notice to the appellants only on prayers (a) and (b) and not on prayers (c), (d) and (e) of the petition. The appellants only discovered the contents of the SHA upon receiving the paperback of the petition. The prayers of the said petition are reproduced as under:-

> *"a. Pass an order of ad-interim/interim injunction, restraining the Respondents, and any of its agents / partners / subsidiaries / affiliates / associates from operating or engaging in competing business activities to the prejudice of the Petitioners and in violation of the non-compete provisions of the Shareholders Agreement under Clause 15;*
>
> *b. Pass an order directing the Respondent No.1 and Respondent No.2 to continue to comply with all the obligations under the Shareholders Agreement and not disrupt the business of the Petitioners or take any such step which would jeopardize the smooth functioning of the Petitioners, in accordance with the terms of the Shareholders Agreement during the pendency of the adjudication of disputes between the parties*
>
> *c. Pass an order directing rendition of accounts in respect of businesses, relating to, akin to or similar to, the business*

of the Petitioner No. 2 whether managed, contributed and/or owned by Respondent No. 1 and Respondent 2, directly or indirectly from 28.04.2018 and the accounts of profits earned by the Respondents till date (including but not limited to their held companies, proprietorships and partnerships);

d. Pass an Order appointing and deputing a local commissioner for the purpose of clause (c) above, to assess and examine the loss caused by Respondent No. 1 and 2 by diverting the business and breaching the terms of the Shareholders Agreement;

e. Pass an ex-parte/ad-interim/interim order directing the Respondents to deposit an amount of Rs. l,00,00,000/- (Rupees One Crore only) before this Hon'ble Court; and/or;

****"*

12. Thereafter, respondents issued a notice invoking arbitration under Section 21 of the Act on 24.08.2023, seeking a three-member tribunal, which was objected to by the appellants on 16.09.2023 due to inconsistencies in the SHA, including irrelevant clauses like "Civil Construction Projects."

13. On 16.10.2023, this Court directed the appellants to submit an affidavit regarding the SHA, wherein the appellants stated that they had never received a copy of the SHA and questioned its authenticity, though admitted the signatures appeared to be theirs. On 16.05.2024, this Court directed the appellants to disclose sales turnover, balance sheets, complete list of clients and nature of services rendered to such

clients, including that of the appellant No. 3. The appellants termed this direction unjustified and harmful to their business, especially after having lost access to servers and emails and highlighted that the non-compete clause was unenforceable post-termination.

14. On 31.05.2024, the respondents challenged the Order dated 16.05.2024 under Section 37 of the Act seeking vacation of the directions contained in paragraph 8 of the said Order. Meanwhile, on 19.07.2024, the Hon'ble Supreme Court appointed the learned arbitrator. The first procedural hearing occurred on 10.08.2024, but the respondents did not file their Statement of Claim. On 23.08.2024, the Division Bench of this Court directed that the petition under Section 9 of the Act be treated as an application under Section 17 of the Act before the learned Arbitral Tribunal and liberty was granted to the learned Arbitral Tribunal to vacate, vary, modify or affirm the Order dated 16.05.2024. The appellants were also granted liberty to move a fresh application under Section 17 of the Act before the learned Arbitral Tribunal.

15. Finally, on 16.12.2024, the learned arbitrator passed an interim award under Section 17 of the Act, as recorded in paragraph 62 of the impugned interim award, which reads as under:-

> *"62. Based on the consideration recorded in the foregoing paragraphs, more particularly in paragraphs 60 and 61 above, the Arbitral Tribunal is satisfied, that an interim order needs to be passed, restraining the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, including their agents, partners, subsidiaries,*

affiliates and associates, from engaging themselves in competing business activities pertaining to 'international freight forwarding and logistics', to the prejudice of SurgePort Logistics Private Limited - Claimant No. 1 and Skyways Air Services Private Limited - Claimant No. 2 (as would infringe the 'non-compete and non-solicit obligations', contained in Clause 15 of the 'Shareholders Agreement', dated 28.04.2018). It is accordingly, so ordered. Needless to mention, that the Respondents would be entitled to seek a recall and/or modification of the above directions, consequent upon the Respondent's disclosing the entire business activities of the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, including their agents, partners, subsidiaries, affiliates and associates, with effect from the date of incorporation of Accel Transport and Logistics (ie., from 18.07.2018), as directed by the Hon'ble Delhi High Court, vide its order dated 16.05.2024. The above disclosures can be made by the Respondents, if the Respondents are so advised, by filing separate affidavits of both the Respondents. If the affidavits filed by the Respondents, turn out to be false or incorrect, or if any information concerning such business activity is withheld, the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, will expose themselves to civil and criminal consequences. With the above observations, the application filed by the Claimants

under Section 9 of the Arbitration and Conciliation Act, 1996 (which has been treated as having been filed under Section 17 of the Arbitration and Conciliation Act, 1996, on the basis of the order passed by Hon'ble Delhi High Court, dated 23.08.2024 - extracted in paragraph 18, above), is disposed of."

SUBMISSIONS ON BEHALF OF THE APPELLANTS

16. Mr. Vivek Kohli, learned senior counsel for the appellants, challenges the impugned interim award contending that it is erroneous in law and warrants being set aside. The core grievance arises from the direction of the learned arbitrator enforcing non-compete and non-solicit clauses i.e. Clause 15 of the SHA, despite the undisputed fact that the SHA was unilaterally terminated by the respondents through Termination Notices dated 25.07.2023, which were further accepted by the appellants via email dated 13.10.2024. It is stated that the said direction of the learned arbitrator imposes a wrongful restraint of trade upon the appellants.

17. The facts clearly demonstrate that the respondents themselves severed the contractual relationship, terminating services of the appellants, denying them access to workplace infrastructure and withholding all forms of remuneration, including salary, commission and dividends. The respondents also communicated this severance to clients, thereby conclusively ending any business associations/engagement with the appellants. Yet, the learned arbitrator erroneously relied on an oral submission made by the respondents claiming no termination had

occurred, citing technicalities like the lack of a second termination letter to appellant No. 2, the authority to terminate the SHA vests with respondent No. 2 and the continued appearance of the appellants as Directors on the MCA portal, despite it being the responsibility of the respondents to update those records.

18. The learned arbitrator's acceptance of these flawed arguments ignores categorical written evidence of termination. It proceeds to grant specific performance of Clause 15 of the terminated SHA, which is impermissible under Sections 14(c) and 14(d) read with Section 41(e) of the Specific Relief Act, 1963 (for brevity "*the SRA*") and is contrary to Section 27 of the Indian Contract Act, 1882 (for brevity "*the ICA*") which renders agreements in restraint of trade void. The appellants argue that enforcing a negative covenant from a terminated agreement deprives them of their right to earn a livelihood and amounts to compelling performance of a personal service contract and determinable contract, which is legally unenforceable in view of Sections 14(c) and 14(d) read with 41(e) of the SRA.

19. The impugned interim award is also criticized for denying immediate relief to the appellants in the form of salary, commissions or dividends, while requiring them to file a separate application for their rightful dues. This imposes an unjust procedural burden on the appellants, already suffering financial hardship due to unlawful termination.

20. Further, the SHA itself quantifies liquidated damages under Clause 15(3), which under established legal principles, precludes grant of injunctive relief at the interim stage. In support, reliance is placed on

Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719 and ***Indian Oil Corporation Limited v. Amritsar Gas Service & Ors., (1991) 1 SCC 533***, where it was held that when damages are an adequate remedy, injunctions should not be granted.

21. The impugned clause is also void for being in restraint of trade post-termination. The law is clear that such restrictive covenants are unenforceable beyond the life of the contract. This has been affirmed in ***Percept D'Mark (India) Private Limited v. Zaheer Khan, (2006) 4 SCC 227***, ***Niranjan Shankar Golikari v. Century Spinning and Manufacturing Company Limited (1967) 2 SCR 378*** and ***Country Development and Management Services Private Limited v. Brookside Resorts Private Limited, 2006 SCC OnLine Del 200***, which hold that post-termination restraints, even outside employment contracts, are contrary to public policy.

22. Reliance is further placed on ***Arvind Medicare Private Limited v. Dr. Neeru Mehra, 2021 SCC OnLine Del 2225***, to urge that personal service contracts cannot be specifically enforced.

23. The enforcement of such a restraint not only violates settled law but also results in grave real-life consequences for the appellants. These include forced idleness, loss of livelihood, corporate subjugation and harm to families dependent on their earnings. Such consequences are disproportionate, unjust and contrary to the equitable principles underlying arbitral relief.

24. In conclusion, the appellants pray that the impugned interim award be set aside as it is legally untenable, factually flawed and causes irreparable harm to the rights and livelihood of the appellants.

25. In addition, on 22.05.2025, the appellants have submitted a supplementary written note stating that they ceased to be Directors of respondent No. 1 with effect from 25.07.2023. This fact is relevant for the proper adjudication of the present appeal and to counter any continuing misrepresentation regarding the subsistence of their directorship.

26. The appellants have submitted that appellant No. 2 was in the process of having his name removed from the Ministry of Corporate Affairs (for brevity "*the MCA*") Master Data records of respondent No. 1 and the said process is now complete.

27. The updated MCA Master Data as of 19.05.2025 confirms that both appellants are no longer listed as Directors of respondent No. 1 since 25.07.2023. It is clarified that the name of appellant No. 1 name was removed earlier on 24.04.2024 and the name of appellant No. 2 has now also been removed.

28. In light of the above factual developments, the appellants reiterate their prayer that the impugned interim award be set aside, as the contractual relationship between the parties has conclusively ended and the underlying basis for enforcing the impugned interim award no longer exists.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

29. The respondents oppose the present appeal against the impugned interim award passed by the learned arbitrator under Section 17 of the Act and submit that the appeal is not maintainable and must be outrightly rejected for there are no grounds made out to suggest that

the impugned interim award is against the fundamental policy of Indian Law, and/or perverse or manifestly arbitrary, and/or the learned arbitrator exceeded his jurisdiction, for it to be challenged under Section 37(2)(b) of the Act.

30. The respondents contend that the core challenge of the appellants, claiming the impugned interim award is equivalent to a "commercial death sentence" or "corporate slavery", is fundamentally flawed. The impugned interim award merely enforces the non-compete obligations under Clause 15 of the valid and subsisting SHA. The learned arbitrator had already considered and rejected the argument of the appellants that the SHA had been terminated. Therefore, the present appeal amounts to a re-litigation of issues that were fully argued and addressed in the Section 17 hearing.

31. The second contention raised by the appellants, alleging that the learned arbitrator misinterpreted Clause 15(1) of the SHA by ignoring its conditionality, is also meritless. The learned arbitrator had thoroughly reviewed and upheld the unambiguous language of the clause and the current argument of the appellants seeks nothing but a re-appreciation of evidence and record, which is impermissible under Section 37 of the Act.

32. The third ground, alleging violation of client confidentiality, thereby enforcing an unconscionable and geographically undefined restraint of trade, compelling perpetual service to the respondent No. 1 in respect of the business of the respondent No. 1, was already adequately considered by the learned arbitrator. The respondents maintain that this claim too is outside the permissible scope of review under Section

37 of the Act.

33. Further, the respondents allege that the appellants have made shifting and contradictory claims throughout the dispute to avoid their contractual obligations under the SHA. Initially, the appellants denied the existence of a valid SHA and claimed they were not Directors or shareholders. However, these contentions were later retracted through affidavits acknowledging the validity of the SHA, their directorships and the nature of the business governed by Clause 15.

34. The respondents also highlight that in earlier proceedings under Section 9 of the Act before this Court, the contentions of the appellants were considered and this Court passed an order on 16.05.2024 directing them to disclose specific commercial information. The operative part of the said Order reads as under:

> *"7. On a specific query, Mr. Ritin Rai, ld. Senior Counsel submits that the Respondent Nos. 1&2 are currently directors of SurgePort Logistics Private Limited and are not engaging himself in any of the competitive business against SurgePort Logistics Private Limited. Mr. Rai further submits that the only business being carried out by the Respondent Nos. 1&2 is a business which was within the knowledge of the Petitioners.*
>
> *8. A perusal of Clause 15 of the Shareholders' Agreement clearly shows that the Respondent Nos. 1&2 cannot engage in any business competitive to the Petitioner No. 1's business, where they are currently directors. The Respondent No. 1&2 shall, accordingly, place on record the*

sales turnover and the balance sheets for the partnership firm Respondent No. 3-M/s Accel Transport and Logistics since its incorporation on 18th July, 2018, as well as the complete list of its clients and the nature of services rendered to such clients. It is also directed that Respondent No. 1&2 shall not use the email addresses of SurgePort Logistics Private Limited in any manner whatsoever."

35. While the appellants challenged that the said Order under Section 37 of the Act, this Court later directed, via its Order dated 23.08.2024, that the petition under Section 9 of the Act be treated as an application under Section 17 of the Act before the learned arbitrator, where all issues were again thoroughly adjudicated. The operative part of the said Appeal Order reads as under:-

"4. Given this position, we are inclined to dispose of the present appeal with the following directions: (i) The application filed by the respondents under Section 9 of the 1996 Act [qua which the impugned judgment and order has been passed], will be treated by the arbitral tribunal as an application under Section 17 of the 1996 Act. (ii) The arbitral tribunal will, after hearing both sides, be at liberty to vacate/vary/modify or even confirm the order and if necessary, grant further relief(s), as may be available in law.

5. Needless to say, the respondents will be at liberty to move a fresh application under Section 17 of the 1996 Act.

6. Given the aforesaid, the respondents will place the order

passed today before the learned Single Judge, who will pass appropriate orders qua the application preferred by the respondents under Section 9 of the 1996 Act, having regard to the directions contained herein."

36. The appellants had argued that the SHA stood terminated due to various alleged violations and a termination notice issued on 25.07.2023. They claimed their relationship with respondent No. 1 had ended, as they were no longer receiving salary, profits or dividends and were accused of engaging in competing businesses. They relied on alleged termination letters, including one dated 25.07.2023. The appellants also relied on precedents asserting that non-compete clauses cannot be enforced post-termination of a contract.

37. The respondents state that the termination notice dated 25.07.2023 could not be considered valid under Clause 14 of the SHA, which only empowered respondent No. 2 to terminate the agreement and not respondent No. 1. Since the said notice was issued by respondent No. 1 and not respondent No. 2, it lacked authority and did not amount to lawful termination. Additionally, this letter mainly pertained to criminal complaints filed before the Economic Offences Wing (for brevity "*the EOW*"), not for termination of the SHA.

38. There exist contradictions in the stand of the appellants: while they earlier denied being party to the SHA, they later acknowledged its execution. Also, the appellants failed to show that a termination notice was ever issued to appellant No. 2. The appellants were still listed as Directors of respondent No. 1 as per the Order dated 16.05.2024

passed by this Court and continued to receive board meeting invitations, indicating an ongoing associations/engagement.

39. On the issue of financial entitlements, the learned arbitrator held that claims regarding profit share, salaries or dividends could be pursued through separate legal means but had no bearing on the enforceability of the SHA or its non-compete and non-solicit clauses. The learned arbitrator found the SHA to be valid and enforceable and that the relationship of the appellants with the company had not been severed.

40. Regarding the applicability of Section 27 of the ICA, the learned arbitrator accepted the argument of the respondents that the appellants were not mere employees but also shareholders and directors. Therefore, the non-compete and non-solicit clauses remained enforceable even during the subsistence of the SHA. The precedents cited by the appellants were found to be inapplicable to the current facts by the learned arbitrator.

41. In conclusion, the learned arbitrator correctly found the SHA to be intact and enforceable, rejected the claim of termination and upheld the enforceability of the restrictive covenants.

42. The respondents had filed a petition under Section 9 of the Act seeking interim reliefs including restraining the appellants from engaging in competing businesses, compliance with the SHA, rendition of accounts, appointment of a local commissioner and deposit of Rs. 1 crore. The appellants opposed these reliefs by arguing that Clause 15(3) of the SHA already provided a penalty framework for breaches, making interim injunctive relief unnecessary. They further contended that the SHA was not breached as their activities

were transparent and approved and any breach could be compensated monetarily as per the penalty clause.

43. However, the respondents contend that Clause 15 alone did not limit their right to injunctive relief, as Clause 25 of the SHA also allowed enforcement through specific performance. The learned arbitrator upheld this view, stating that the respondents would otherwise be unable to identify violations without disclosure from the appellants. Since the appellants had not complied with court directions to disclose their business activities, it became necessary to grant interim protection to preserve the rights of the respondents under the SHA.

44. The learned arbitrator also pointed out that the appellants had earlier questioned the validity of the SHA, calling it unregistered and unstamped, only to later abandon that argument. This inconsistency, along with non-compliance with the Orders of this Court to submit affidavits regarding disclosing their business details, raised questions on the credibility of the appellants.

45. The learned arbitrator held that the interim relief granted was aligned with the terms of the SHA and not excessive. It merely restrained the appellants from engaging in competing business activities in international freight forwarding and logistics. The learned arbitrator noted that while appellant No. 3 was permitted to act as a vendor, it was not authorised to engage in competing businesses. The learned arbitrator found five letters evidencing the intent of the appellants to breach non-compete obligations and cited their continued refusal to disclose business activities as directed by this Court.

46. Additionally, the learned arbitrator found no merit in the argument of

the appellants that Clause 15 was ambiguous and rejected the contentions of the appellants. He held that Clause 15 clearly prohibited not only direct competition but also businesses that are "relatively same business", thereby establishing a broad scope for prohibited activities.

47. In view of the above, the respondents urge that the present appeal be dismissed.

ANALYSIS AND FINDINGS

48. I have heard learned counsel for the parties and also perused the material available on record.

Scope of Interference under Section 37(2)(b) of the Act.

49. Before delving into the substantive merits of the impugned interim award, it is important to delineate the permissible scope of judicial interference under Section 37(2)(b) of the Act. The said provision is extracted below:-

> *"37. Appealable orders.—*
>
> ***
>
> *(2) Appeal shall also lie to a court from an order of the arbitral tribunal—*
>
> ***
>
> *(b) granting or refusing to grant an interim measure under section 17."*

50. Under Section 37(2)(b) of the Act, the jurisdiction of an appellate court to interfere with an interim order passed by an arbitral tribunal

under Section 17 of the Act is limited and well-settled. This restrained approach is rooted in the legislative policy of the Act, as reflected in Section 5 of the Act, which mandates minimal judicial intervention in arbitral proceedings.

51. Judicial intervention is warranted only when the order is (A) perverse, arbitrary or unreasonable, (B) contrary to the fundamental policy of Indian law, (C) the arbitral tribunal has exceeded or failed to exercise its jurisdiction, and/or (D) it results in a miscarriage of justice.

52. This standard has been laid down and reiterated in multiple decisions of the Hon'ble Supreme Court and this Court including ***National Highways Authority of India v. HK Toll Road Private Limited, 2025 SCC OnLine Del 2376.*** The relevant paragraphs read as under:-

> *"54. The Supreme Court and this Court in catena of judgments have held that the powers of appellate court while exercising jurisdiction under Section 37(2)(b) of the 1996 Act against orders passed by the Arbitral Tribunal is very restricted and narrow and the same should be exercised when the orders seems to be perverse, arbitrary and contrary to law. ...*
>
> ***
>
> *56. A perusal of the aforesaid judgments show that the appellate court while exercising powers/jurisdiction under Section 37 of the 1996 Act and more particularly under Section 37(2)(b) of the 1996 Act has to keep in mind the limited scope of judicial interference as prescribed under Section 5 of the 1996 Act. Section 5 of the 1996 Act clearly*

reflects the legislative intent to minmize judicial interference in the arbitration process. Unlike the appeals under other statutes, the appeals under the 1996 Act against the orders passed by the Arbitral Tribunal are subject to strict and narrow grounds. The 1996 Act aims at minimal court involvement, thereby to uphold the autonomy and efficiency of the arbitration process. (Reference: paras 64, 66, 68-70 of Dinesh Gupta case13).

57. The appellate court is not required to substitute its views with the view taken by the Arbitral Tribunal which is a reasonable or a plausible view except where the discretion is exercised arbitrarily or where the AT has ignored the settled principles of law. In fact, the whole purpose to bring the 1996 Act is to give supremacy to the discretion exercised by the AT. The appellate court is not required to interfere in the arbitral orders especially a decision taken is at an interlocutory stage. The appellate court is only required to see the whether the AT has adhered to the settled principles of law rather than reassessing the merits of the AT's reasoning.

58. A coordinate Bench of this Court in Tahal Consulting Engineers India (P) Ltd. case22 has observed as under: (SCC OnLine Del paras 36 and 38)

> *"36. L & T Finance lays emphasis on the need of the appellate court to bear in mind the basic and foundational principles of the Act and that being of*

judicial intervention being kept at the minimal. It also correctly finds that the power conferred by Section 37(2)(b) is not to be understood as being at par with the appellate jurisdiction which may otherwise be exercised by courts in exercise of their ordinary civil jurisdiction. This clearly flows from the foundational construct of the Act which proscribes intervention by courts in the arbitral process being kept at bay except in situations clearly contemplated under the Act or where the orders passed by the Arbitral Tribunal may be found to suffer from an evident perversity or patent illegality.

*****

38. It would thus appear to be well settled that the powers under Section 37(2)(b) is to be exercised and wielded with due circumspection and restraint. An appellate court would clearly be transgressing its jurisdiction if it were to interfere with a discretionary order made by the Arbitral Tribunal merely on the ground of another possible view being tenable or upon a wholesome review of the facts the appellate court substituting its own independent opinion in place of the one expressed by the Arbitral Tribunal. The order ofthe Arbitral Tribunal would thus be liable to be tested on the limited grounds of perversity, arbitrariness and a manifest illegality only."

59. To sum up, it is clear that in view of the limited judicial interference, the appellate court has to exercise its power only if the arbitral order suffers from perversity, arbitrariness and a manifest illegality."

53. Hence, it is clear that in view of the limited judicial interference, the Appellate Court must intervene only where the order is vitiated by perversity, arbitrariness, jurisdictional error or contravention of public policy.

Ambit of Section 17 of the Act.

54. Section 17 of the Act empowers an arbitral tribunal to grant interim measures during arbitral proceedings or after the arbitral award but prior to its enforcement under Section 36 of the Act. Such measures may include the protection relating to the preservation or sale of goods, securing monies in dispute, inspection or preservation of disputed property, interim injunctions or receivership and any other protective or convenient orders deemed necessary. The arbitral tribunal is vested with powers equivalent to those of a civil court for granting such reliefs and the orders under Section 17 of the Act are treated as court orders and are enforceable under the Code of Civil Procedure, 1908 (for brevity "*the CPC*") in the same manner as orders of a civil court.

55. The Coordinate Bench of this Court in ***Handicraft and Handlooms Exports Company of India v. SMC Comtrade Limited, 2023 SCC OnLine Del 3981*****,** reiterated the judgment of ***Arcelormittal Nippon Steel (India) Limited (supra).*** The relevant paragraph reads as under:-

"36. Once the scope of interference by this Court in an order passed by the learned Arbitrator under Section 17 of the 1996 Act is understood, it is necessary to look at the scope of power of the Arbitral Tribunal under Section 17, which to my mind is an issue no longer res integra. Section 17 of the 1996 Act has been specifically enacted by the legislature to provide to a party, during the arbitral proceedings or after the award is made but before it is enforced, a right of seeking preservation of the subject matter of the arbitration agreement and/or securing the amount in dispute in arbitration. Post the amendment of Section 17 of the 1996 Act, it is in the same province as Section 9 of the Act, as held by the Supreme Court in a recent decision in Arcelor Mittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd., (2022) 1 SCC 712 and bestows power on the Arbitral Tribunal to make orders of interim protection on a wider canvass. …"

56. To grant interim reliefs under Sections 9 or 17 of the Act, the ingredients as set out in the judgment of ***Arcelormittal Nippon Steel (India) Limited (supra)*** are to be satisfied. The relevant paragraph reads as under:-

"89. The principles for grant of interim relief are (i) good prima facie case, (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury or loss to the applicant for interim relief. Unless applications for interim measures are decided expeditiously, irreparable

injury or prejudice may be caused to the party seeking interim relief."

57. Having discussed the principles with regard to the powers of the Appellate Court and the powers of the arbitral tribunal under Section 17 of the Act, I will now proceed to examine the contentions raised by the parties.

Whether the Shareholders' Agreement was Validly Terminated.

58. A pivotal issue in this case is whether the SHA dated 28.04.2018 was validly terminated by the respondents through the termination notice dated 25.07.2023. The appellants contend that upon termination of the SHA, they ceased to owe any obligations under Clause 15, including the non-compete and non-solicit obligations. The learned arbitrator, however, found that the SHA continued to remain valid and binding upon the parties.

59. The relevant paragraph of the impugned interim award is reproduced as under:-

> *"55. The Respondents have also canvassed before the Arbitral Tribunal, that the action of the Claimants towards the Respondents, has been harsh and severe, after the issuance of the 'show cause notice', dated 07.06.2023. In this behalf it was pointed out, that the Claimants have put an end to everything between the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer. It was submitted, that the Claimants have prohibited the Respondents, from carrying on any activity connected with*

'international freight forwarding and logistics'. This action of the Claimants, it was argued, violates the safeguards available to the Respondents, under Section 27 of the Indian Contract Act, 1872. The Arbitral Tribunal has given its thoughtful consideration to the instant submission advanced by the learned Counsel for the Respondents. In support of the instant assertion, reliance was placed by the learned Counsel for the Respondents on the judgments noted in paragraph 37, above. The same have been duly considered by the Arbitral Tribunal. The Arbitral Tribunal has also considered the judgments relied upon by the learned Counsel for the Claimants, as have been referred to in paragraph 50, above. The Arbitral Tribunal is of the considered view, that the relationship of the Respondents with SurgePort Logistics Private Limited - Claimant No. 1, has not been severed. The Respondents - Mr. Paul Deepak Rajarantnam, and Mr. Mohamed Naushad Basheer, still continue to be the Directors of Claimant No.1 - SurgePort Logistics Private limited. This position has been recorded in the order of the Hon'ble Delhi High Court, dated 16.05.2024 (passed in O.M.P. (I) (COMM.) 246/2023). In the instant order passed by the Hon'ble High Court, it was observed " ... On a specific query, Mr. Ritin Rai, ld. Senior Counsel submits that the Respondent Nos. 1&2 are currently directors of SurgePort Logistics Private Limited and are not engaging himself in any of the competitive

business against SurgePort logistics Private Limited. Mr. Rai further submits that the only business being carried out by the Respondent Nos. 1&2 is a business which was within the knowledge of the Petitioners …". The Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, continue to possess a right to dividends from SurgePort Logistics Private Company, in consonance with their respective share holdings. The Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, are also entitled to salary under Clause 4 (2) of the 'Shareholders Agreement', dated 28.08.2018. It is the case of the learned counsel for the Claimants, that the relationship of the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, with SurgePort Logistics Private Limited, has not come to an end, and that it still subsists. The Arbitral Tribunal finds itself satisfied, with the above submission of the learned Counsel for the Claimants. In the considered opinion of the Arbitral Tribunal, till the relationship between the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, with SurgePort Logistics Private Limited subsists, there can be no question of any breach of Section 27 of the Indian Contract Act. As such, the 'non-compete and non-solicit obligations' contained in Clause 15 of the 'Shareholders Agreement', dated 28.04.2018, is liable to be considered as valid, and

enforceable against the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer. For the reasons recorded above, the Arbitral Tribunal finds no merit in the contention advanced on behalf of the Respondents, on the basis of Section 27 of the Indian Contract Act, 1872."

60. On perusal, the conclusion of the learned arbitrator that the SHA is subsisting was premised on the following grounds:-

A. The appellants continue to be Directors of the respondent No. 1 company and have not ceased to be associated with the company. This fact was noted in the Order dated 16.05.2024 passed by this Court on a specific query put to learned counsel of the appellants, which confirmed their position as directors and their non-engagement in competing business.

B. The learned arbitrator found that, despite the issuance of a show cause notice and the subsequent disputes, the formal relationship between the parties under the SHA had not been brought to an end and the rights and obligations of the appellants under the SHA persisted.

Therefore, the learned arbitrator held that until the relationship between the appellants and the respondent No. 1 is legally severed, the SHA remains valid and subsisting, including all attendant rights and obligations thereunder.

61. After examining the matter, I agree with the conclusion of the learned arbitrator and set forth the following detailed reasons:-

A. <u>**_Conduct of the Appellants Inconsistent with Termination._**</u>

62. The fact that weighs with me is that the material on record does not support the contention of the appellants that the SHA stood terminated pursuant to the termination notice dated 25.07.2023.

63. At the outset, it is relevant to note that the Order dated 16.05.2024 passed by this Court in O.M.P.(I)(COMM) 246/2023 expressly records that the appellants continued to hold the position of Directors in the respondent No. 1 company as on the said date. This factual finding, recorded by a coordinate Bench of this Court, directly contradicts and undermines the present contention of the appellants that all legal and contractual relationships with the respondent No. 1 were terminated as early as 25.07.2023.

64. The relevant extract from the said Order is reproduced as under:-

> *"7. On a specific query, Mr. Ritin Rai, ld. Senior Counsel submits that the Respondent Nos. 1&2 are currently directors of SurgePort Logistics Private Limited and are not engaging himself in any of the competitive business against SurgePort Logistics Private Limited. Mr. Rai further submits that the only business being carried out by the Respondent Nos. 1&2 is a business which was within the knowledge of the Petitioners.*
>
> *8. A perusal of Clause 15 of the Shareholders' Agreement clearly shows that the Respondent Nos. 1&2 cannot engage in any business competitive to the Petitioner No. 1's business, where they are currently directors. The Respondent No. 1&2 shall, accordingly, place on record the*

sales turnover and the balance sheets for the partnership firm Respondent No. 3-M/s Accel Transport and Logistics since its incorporation on 18th July, 2018, as well as the complete list of its clients and the nature of services rendered to such clients. It is also directed that Respondent No. 1&2 shall not use the email addresses of SurgePort Logistics Private Limited in any manner whatsoever."

65. This Order leaves little room for doubt. The representation made by learned senior counsel and duly recorded by this Court, confirms the continued role of the appellants as Directors and their ongoing legal obligations under Clause 15 of the SHA. Therefore, the attempt of the appellants to portray a clear severance from the corporate and contractual framework post 25.07.2023 is not only factually incorrect but also legally untenable in light of the express judicial record.

66. Beyond the documentary record, what also warrants an adverse inference is the timing and evolving nature of the stand of the appellants regarding the termination of the SHA. Although the termination notice is dated 25.07.2023, it is noteworthy that the appellants themselves neither acted upon nor relied on this notice until much later. Their formal acceptance of the termination was communicated only on 13.10.2024, well after the commencement of arbitration proceedings on 10.08.2024. This delayed and selective invocation of the termination plea, conveniently raised only in response to the initiation of arbitral proceedings, appears to be a clear afterthought.

67. Further, in their additional reply dated 13.09.2024 to the application of

the respondents under Section 17 of the Act, the appellants made no mention whatsoever of the alleged termination of the SHA or of Clause 15 being rendered unenforceable as a consequence thereof. This line of argument was raised for the first time only in their written submissions dated 27.11.2024, over three months after the commencement of arbitration and only after their acceptance of the termination had been formally communicated.

68. It is also relevant to note that the appellants were subsequently compelled to file an application dated 22.10.2024 seeking to bring on record their acceptance of the termination. The said application states as follows:

> *"3. ... However, the aforesaid documents filed on 17.09.2024 (S.No.2) and 13.10.2024 (S.No.4) have not been taken on record on account of the inadvertence of the Respondents by failing to prefer an Application seeking specific liberty of this Hon'ble Tribunal to bring the aforesaid additional documents on record for the proper and fair adjudication of the pending dispute between the parties.*
>
> *5. In re: the document at S.No.4, i.e. Annexure R13 (COLLY), viz. the Respondents' email to the Claimants dated 13.10.2023, it is submitted that the said document is a fresh document being the Respondents' Notices dated 13.10.2024 confirming the termination of Shareholders' Agreement dated 28.04.2018 w.e.f. 25.07.2023. The said document was not in the power, possession or control of the*

Respondents at the time of filing theReply or Additional Reply to the Claimants' Section 17 Application as it was not in existence at the relevant time.It is a matter of record that this Hon'ble Tribunal, after recording no objection of the Claimants, was pleased to take on record the Claimants' Termination Notice dated 25.07.2023 in terms of order dated 30.09.2024. However, during the course of the arguments, the Claimants have conveniently chosen to wriggle out of the said termination by giving a different interpretation totheir Notice of Termination dated 25.07.2023. Therefore, it was deemed necessary and appropriate to issue notices of confirmation of the termination of the Shareholders' Agreement."

69. This extract further demonstrates that the position of the appellants evolved only after the arbitral process had commenced and in response to the legal strategy of the respondents. It reveals that the termination was not treated as operative until it became expedient to do so during the proceedings. Such conduct reinforces the inference that the plea is opportunistic and designed to evade contractual obligations, particularly those imposed under Clause 15 of the SHA.

70. Even more significantly, the appellants have, at different stages, taken inconsistent positions regarding the very existence of the SHA. In earlier pleadings and communications, the appellants outright denied the existence and enforceability of the SHA. However, at a subsequent stage, they chose to rely upon the same agreement to claim that it stood terminated.

71. The Order dated 19.12.2023 passed by this Court records the contradictory stand of the appellants, which is reproduced as under:-

> *"1. On the last date, in the light of the specific plea raised by the respondents that the shareholder agreement relied upon by the petitioners, which contained the arbitration clause had not been signed by them, directions were issued to them to file their specific affidavits in this regard.*
>
> *2. The respondent nos.1 & 2 have now filed their respective affidavits wherein the said respondents have taken a completely contradictory stand that the aforesaid shareholder agreement dated 28.04.2018 relied upon by the petitioners were signed by them. This Court is unable to appreciate this apparently false stand which was being all along taken by respondent nos. 1 &2 with an intent to mislead this Court.*
>
> *3. It further appears that when the respondents realised the gravity of having taken a blatantly false stand before this Court, they have now chosen to file a set of documents without seeking any prior leave of this Court. Though the said documents ought not to have been placed on record by the Registry without any permission for the same having been granted to the respondents by this Court, taking into account that same have already been placed on record, no further orders are being passed. However, as prayed for the petitioners are granted two weeks' time to file a response thereto. Reply, if any, by the respondents be filed within one*

week thereafter."

72. Lastly, the MCA Master Data records reflecting the cessation of the directorship of the appellants is, in essence, a self-serving document, having been unilaterally filed by the appellants themselves with the MCA. It does not, by itself, establish the termination of the broader legal relationship governed by the SHA. The mere act of updating statutory records cannot override or substitute the mutual obligations contemplated under the SHA, particularly when the underlying termination itself is disputed.

73. Taken cumulatively, the documentary recognition of the appellants positioned as Directors of the respondent No. 1 company well after the purported termination, their delay in asserting the plea of termination and their inconsistent positions regarding the existence of the SHA, all point to a lack of bona fides and undermine the credibility of their claim that the SHA was validly terminated.

74. This Court accordingly finds no infirmity in the finding of the learned arbitrator that the SHA continued to subsist and had not been effectively or lawfully terminated.

B. Separation from Management ≠ Termination of Contractual Obligations.

75. The appellants have contended that their removal from email systems, cessation of remuneration and exclusion from day-to-day affairs signify the termination of the SHA and removal from directorship. Even if such an inference is accepted for the sake of argument, it is critical to underscore that these actions may, at best, evidence a

change in managerial or operational status. However, they do not, *ipso facto*, result in the legal termination of the SHA.

76. The SHA is a commercial agreement entered into between equity holders, establishing rights and obligations in the capacity of shareholders, not as employees or executives. Employment or managerial roles may flow from or coincide with shareholding arrangements, but they are not synonymous with them. Consequently, disengagement from management or operational responsibilities does not bring about the cessation of contractual obligations imposed under the SHA, including those that survive its termination, such as non-compete and non-solicit covenants.

77. This distinction has been duly recognized by the learned arbitrator, particularly in relation to the claim of the appellants regarding their financial entitlements. The learned arbitrator granted liberty to the parties to file their financial claims and held that the same have no nexus to the non-compete and non-solicit obligations of the SHA.

78. The relevant paragraph reads as under:

> *"57. ... The Arbitral Tribunal has given its thoughtful consideration, to the aforesaid submissions, advanced on behalf of the Respondents. The Arbitral Tribunal, however, finds no merit in the same. In case the Respondents are entitled to any financial benefits from the Claimants, it is open to the Respondents to seek the same , in consonance with law. Just like the Claimants, it is open to the Respondents to seek the above noted dues, by moving an appropriate application, before the Arbitral Tribunal.*

Alternatively, the Respondents may claim the same, by filing 'counter claims' before the Arbitral Tribunal. The instant contention of the learned Counsel for the Respondents, has no nexus to the 'non-compete and non-solicit obligations', contained in the Clause 15 of the 'Shareholders Agreement', dated 28.04.2018. For the above reasons, the Arbitral Tribunal finds no merit in the instant contention of the Respondents."

79. This reasoning finds support in the decision of the Bombay High Court, in ***Novartis Vaccines & Diagnostics Inc. v. Aventis Pharma Limited, 2009 SCC OnLine Bom 2067***, which emphasized the enduring nature of contractual obligations arising out of joint venture or shareholders' agreements, irrespective of operational disengagement. The relevant paragraph reads as under:-

"37. Where parties enter into any kind of Joint Venture and/or partnership to do particular business and/or to establish particular business or company and, accordingly, enter into various contracts/agreements, it is always on the foundation of meeting of mind with an intention to do the joint business in cooperation, in Trust and in good faith for the common advantage & benefit. The commercial contracts always need to be respected and considered from the above point of view. The scheme, the object and the intention of the parties to enter into such type of agreement/contract need to be read together by reading and by considering the whole documents as well as the purpose

and the object behind formation of such partnership/company. No provision is made for a partner to do rival or competing business freely. Both the parties are governed by JVA, shareholders agreement & the Article of Association of CBVPL. Both the partners are aware of their respective, written & unwritten obligations, liabilities, duties."

80. Accordingly, the mere cessation of managerial roles or non-participation in operational affairs does not absolve a party from the continuing legal and contractual obligations flowing from the SHA. Any attempt to circumvent or disclaim such obligations by citing managerial disengagement is legally unsustainable.

Non-Applicability of Section 27 of the Indian Contract Act, 1882.

81. The argument of the appellants is that the impugned interim award is contrary to Section 27 of the ICA which renders agreements in restraint of trade void. The appellants argued that enforcing a restrictive covenant from a terminated agreement deprives them of their right to earn a livelihood.

82. Section 27 of the ICA provides that every agreement by which anyone is restrained from exercising a lawful profession, trade or business is to that extent void, unless it falls within the statutory exception. The sole exception to this provision pertains to the sale of goodwill, where the seller may agree to a reasonable restriction on carrying on a similar business within specified limits. The said provision reads as under:

"27. Agreement in restraint of trade, void.—Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1.—Saving of agreement not to carry on business of which good-will is sold.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business."

83. It is well settled that restrictive covenants during the term of a valid contract are not considered in restraint of trade under Section 27 of the ICA. Since the learned arbitrator has found that the SHA is still in force, to which I agree, Clause 15 of the SHA is not in restraint of trade and remains enforceable, as detailed hereinunder.

84. In ***Niranjan Shankar Golikari (supra)***, the Hon'ble Supreme Court upheld restrictions during the course of employment or contractual engagement, distinguishing them from post-contractual restraints. The relevant paragraph reads as under:-

"17. The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract.

Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under Section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one sided as in the case of W.H. Milsted and Son Ltd. [W.H. Milsted and Son Ltd. v. Hamp and Ross and Glendinning Ltd., 1927 WN 233].”

85. Recently, the Hon'ble Supreme Court in ***Vijaya Bank &Anr. v. Prashant B. Narnaware, 2025 INSC 691,*** again upheld the validity of the restrictive covenant operating during the subsistence of the contract. The relevant paragraphs read as under:-

“15. In view of these authoritative pronouncements, it can be safely concluded law is well settled that a restrictive covenant operating during the subsistence of an employment contract does not put a clog on the freedom of a contracting party to trade or employment.

16. A plain reading of clause 11 (k) shows restraint was imposed on the respondent to work for a minimum term i.e. three years and in default to pay liquidated damages of Rs. 2 Lakhs. The clause sought to impose a restriction on the

respondent's option to resign and thereby perpetuated the employment contract for a specified term. The object of the restrictive covenant was in furtherance of the employment contract and not to restrain future employment. Hence, it cannot be said to be violative of Section 27 of the Contract Act."

86. The reliance of the appellants on a decision where restrictive covenants were held unenforceable post-termination, such as ***Percept D'Mark (India) Pvt. Ltd. (supra)*** is misconceived in the present case. In this case, the agreement was validly terminated and the clause in question extended far beyond the subsistence of the contract. The relevant paragraph of the judgment reads as under:-

"63. Under Section 27 of the Contract Act: (a) a restrictive covenant extending beyond the term of the contract is void and not enforceable, (b) the doctrine of restraint of trade does not apply during the continuance of the contract for employment and it applies only when the contract comes to an end, (c) as held by this Court in Gujarat Bottling v. Coca-Cola [(1995) 5 SCC 545] this doctrine is not confined only to contracts of employment, but is also applicable to all other contracts."

87. I am of the considered view that the contention of the appellants that the enforcement of a restrictive covenant from a terminated agreement infringes upon their right to livelihood and is hit by Section 27 of the ICA is misconceived. The learned arbitrator has expressly clarified that the appellants are not barred from engaging in any lawful trade,

business or profession, except from international logistics and freight forwarding, in view of Clause 15 of the SHA.

88. In addition, the learned arbitrator entitled the appellants to seek a recall or modification of the directions in the impugned interim award, consequent upon the appellants' disclosing their entire business activities, as directed by this Court, *vide* its order dated 16.05.2024. This narrowly tailored requirement ensures that the interim relief granted remains proportionate and balanced and does not amount to an unreasonable or absolute restraint on their right to earn a livelihood.

The Impugned Interim Award Satisfies the Triple Test of Granting an Interim Relief.

89. The Hon'ble Supreme Court in ***Dalpat Kumar (supra)*** has discussed the well-settled triple test that governs the grant of interim relief, which reads as under:

> *"5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant*

injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

(emphasis supplied)

90. The interim relief granted by the learned arbitrator in the impugned

interim award reads as under:-

> *"62. Based on the consideration recorded in the foregoing paragraphs, more particularly in paragraphs 60 and 61 above, the Arbitral Tribunal is satisfied, that an interim order needs to be passed, restraining the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, including their agents, partners, subsidiaries, affiliates and associates, from engaging themselves in competing business activities pertaining to 'international freight forwarding and logistics', to the prejudice of SurgePort Logistics Private Limited - Claimant No. 1 and Skyways Air Services Private Limited - Claimant No. 2 (as would infringe the 'non-compete and non-solicit obligations', contained in Clause 15 of the 'Shareholders Agreement', dated 28.04.2018). It is accordingly, so ordered. Needless to mention, that the Respondents would be entitled to seek a recall and/or modification of the above directions, consequent upon the Respondent's disclosing the entire business activities of the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, including their agents, partners, subsidiaries, affiliates and associates, with effect from the date of incorporation of Accel Transport and Logistics (ie., from 18.07.2018), as directed by the Hon'ble Delhi High Court, vide its order dated 16.05.2024."*

91. In the present case, on a holistic appreciation of the record, I am of the

opinion that the learned arbitrator has justifiably concluded that each of the prongs of the triple test stand satisfied.

92. The impugned interim award restrains the appellants from engaging in business activities that are identical or competing with the domain of "international logistics and freight forwarding", the precise scope covered under Clause 15 of the SHA. Far from being overboard, the impugned interim award is narrowly tailored to protect the contractual interests of the parties and maintain the *status quo* in a domain contractually agreed to be restricted.

93. Importantly, the learned arbitrator has expressly clarified that the appellants are free to pursue any other lawful trade, business or profession. Additionally, the injunction is also capable of being recalled or modified upon the disclosure of the appellants of the details of their ongoing business activities in compliance with the Order dated 16.05.2024 passed by this Court. This carve-out ensures that the interim relief remains proportionate and does not impose any unreasonable restraint on their right to livelihood.

94. The detailed analysis of the satisfaction of the impugned interim award on the established triple test for granting an interim relief is as under:-

A. <u>Prima Facie Case Exists.</u>

95. The prima facie case is established through cogent documentary evidence and conduct of the appellants, detailed in paragraph 60 of the impugned interim award. Despite specific directions issued by this Court *vide* order dated 16.05.2024, the appellants failed to disclose the

nature and extent of their business operations, including that of the appellant No. 3. This deliberate non-compliance warranted an adverse inference by the learned arbitrator that such documents, if produced, would have revealed active engagement in competing business activities. The learned arbitrator further noted that the appellants initially denied the very existence of the SHA, but later reversed their position and admitted their signatures once pressed through judicial proceedings. This shifting and evasive conduct reflected a lack of candour and reinforced the case of the respondents.

96. The learned arbitrator also relied on five letters addressed by the appellants to various international clients between May and August 2019, in which they falsely represented the appellant No. 3 company as a “group company” of the respondent No. 1. These communications, which were never denied by the appellants, established that the appellants misused the name and the goodwill of the respondents to divert business opportunities in violation of Clause 15 of the SHA. Further, two certificates issued by international partners, Jilani Freight International (Pakistan) and NorthPort Logistics (Sri Lanka), confirmed that the appellant No. 3 company was acting as their principal in the same line of business. These certificates remained uncontroverted during the arbitration proceedings and clearly demonstrated engagement in competing activities. Additionally, a “relieving certificate” dated 25.03.2022 issued by the appellant No. 2 falsely claimed that he was no longer associated with the respondent No. 1, although he continued to be its Director. The learned arbitrator rightly inferred that this falsehood was

crafted to facilitate the solicitation of the appellants of international business.

97. The learned arbitrator also examined emails dated 06.01.2023, wherein the appellant No. 2 offered to represent Oceanwide Logistics in India through the appellant No. 3 company and promised to expand its operations into the Gulf and Africa. The email was marked to the appellant No. 1, indicating collusion. Yet another email thread from March 2022 and March 2023 revealed the appellants exploring logistics business in Indonesia through the appellant No. 3 company without any role for the respondent No. 1.

98. The above mentioned findings establish a consistent and continuing breach of Clause 15 of the SHA, leaving little room for doubt as to the existence of a strong prima facie case. At this interim stage of the arbitration proceedings, a detailed examination of the above referred material is not required to grant an interim relief, as long as a prima facie case is established by the aggrieved party.

B. Irreparable Injury Exists.

99. With respect to the second limb of the triple test, the learned arbitrator found that irreparable injury would result from continued breach of Clause 15 of the SHA.

100. The argument of the appellants is that Clause 15(3) of the SHA provides for liquidated damages in the event of breach of the non-compete and non-solicit obligations under Clause 15 of the SHA and once the parties have contractually agreed upon quantifiable compensation, the grant of injunctive relief is legally impermissible.

Clause 15(3) reads as follows:-

> *"3. In the event of non compliance of 1 and 2 above, the party at the Second Part and/or the Party at the Third Part shall be liable to compensate by way of penalty to the party at First Part with minimum amount of Rupee one crore and subject to maximum of loss suffered party at the First Part due to breach of agreement by the party at Second and/or Third Part."*

101. However, I do not find this argument tenable in the present circumstances. In paragraph 60 of the impugned interim award, the learned arbitrator noted that the global nature of international freight forwarding renders it virtually impossible for the respondents to track or unearth the activities of the appellants, particularly given the opaque and cross-border character of such operations. The relevant paragraph of the impugned interim award reads as under:-

> *"60. ... It needs to be kept in mind, that the business activity in the present case pertains to 'international freight forwarding and logistics'. Transaction of business, in the field of 'international freight forwarding and logistics', are spread over the entire world. This position is also apparent from Clause 8 of the 'Shareholders Agreement' dated 28.04 .2018 (extracted in paragraph 45, above) . It is 'not' be possible to expect, that the Claimants will ever be in a position to ascertain the business activities of the Respondents - Mr. Paul Deepak Rajaratnam, and Mr. Mohamed Naushad Basheer, no matter how hard they may*

try to dig out the same. It is therefore meaningless on the part of the Respondents to contend, that compensation payable to the Claimants under Clause 15, would emerge after the Claimants have completed their pleadings and produced their witnesses. If the Respondents , had placed the details of their business activities (including those of Accel Transport and Logistics, from the date of its incorporation of Accel Transport and Logistics), on the record of the case, in compliance with the directions issued by the Hon 'ble Delhi High Court, on 16.05.2024 {in O.M.P. (I) (COMM.) 246/2023), it would perhaps have been possible for the Claimants, to point out the business transactions entered into by the Respondents, which transgressed the 'non-compete and non-solicit obligations', contained in Clause 15. The aforesaid direction of the Hon'ble High Court, was contained in paragraph 8 of its order, which is being extracted hereunder:- …"

102. In the present case, the respondents operate in the highly competitive and intangible domain of international freight forwarding and logistics, a sector driven primarily by goodwill, proprietary know-how and confidential client relationships. It is pertinent to note that such relationships, once breached, are not easily quantifiable in monetary terms and cannot be adequately restored through damages alone. The continued violation of non-compete and non-solicit obligations, therefore, threatens to irreparably erode the market position of the respondents, causing loss that is neither measurable nor compensable

through a purely financial remedy.

103. In view of the matter, since the appellants failed to disclose their financials and operational data despite clear directions vide the Order dated 16.05.2024 passed by this Court, there was no basis for assessing the adequacy of damages. It is pertinent to note that this disclosure by the appellants was critical to enable the learned arbitrator to examine whether Clause 15 of the SHA had been breached and if so, to determine the appropriate quantum of liquidated damages under Clause 15(3) of the SHA, which quantifies a minimum penalty of Rs. 1 crore and provides a ceiling based on the actual losses suffered. However, the continued failure of the appellants to comply with this judicial direction frustrated any meaningful inquiry into the existence and extent of breach, thereby depriving the learned arbitrator of the evidentiary basis required to award damages at this stage, which could very well be in excess of the minimum penalty of Rs. 1 crore.

104. The only argument of the appellants for the non-compliance of the Order dated 16.05.2024 passed by this Court is that the disclosure mandate is excessive, unjustified and severely detrimental to their business. According to the appellants, compliance with this Order would compromise client confidentiality and threaten their very survival in the logistics sector. Further, they assert that the respondents had already terminated their services and access to company systems on 25.07.2023 and therefore, lacked the standing to seek equitable relief.

105. However, this argument does not impress me, as the proceedings under Sections 9 and 17 of the Act evolve based on the necessity to

preserve the subject matter of arbitration or prevent irreparable injury. This Court's as well as the learned arbitrator's directive for disclosure likely stemmed from a legitimate need to assess whether there was an ongoing violation of contractual obligations or misuse of confidential material. Interim measures are granted on a prima facie basis and do not require a conclusive adjudication on the merits.

106. In such circumstances, the mere existence of a liquidated damages clause does not preclude injunctive relief where quantification of loss is not possible due to the conduct of the breaching party. I am satisfied that interim protection was essential to preserve the subject matter of the dispute under Section 17 of the Act and to prevent the arbitral proceedings from being rendered otiose. Hence, the finding of the learned arbitrator on this point is both reasonable and supports the triple test.

C. <u>Balance of Convenience in Favour of the Respondents.</u>

107. The balance of convenience too lies squarely in favour of the respondents. The interim relief granted is not in the nature of a blanket prohibition but is strictly limited to restraining those activities that the appellants had contractually undertaken to refrain from. The appellants remain free to engage in other lawful business activities not covered by Clause 15 of the SHA. Further, the appellants are granted the liberty to apply for recall or modification upon filing full disclosure affidavits of their business activities, including that of the appellant No. 3.

108. On the contrary, denial of interim relief would enable the appellants to

continue eroding the business of the respondents in foreign jurisdictions, thereby frustrating the purpose of the arbitration and rendering any final award meaningless. If the injunction is denied and the appellants are later found to have violated Clause 15 of the SHA, it would be practically impossible to reverse the commercial harm caused.

109. Importantly, the impugned interim award is neither punitive nor final in nature, it merely preserves the contractual *status quo* under Section 17 of the Act, pending final adjudication.

110. In conclusion, the impugned interim award is a well-reasoned and proportionate exercise of the powers of the learned arbitrator under Section 17 of the Act. It satisfies all three elements of the established triple test for granting an interim relief and is based on detailed analysis of the material available on record. The appellants have not only breached Clause 15 of the SHA but also withheld material documents and facts. The interim injunction granted by the learned arbitrator is not only legally sustainable but essential in this factual backdrop to ensure that the arbitral proceedings remain meaningful, efficacious and equitable.

CONCLUSION

111. It is well settled that under Section 37(2)(b) of the Act, this appellate court is permitted to interfere with the impugned interim award granting interim measures under Section 17 of the Act, only in the case where the impugned interim award suffers from perversity, patent illegality, arbitrariness, jurisdictional error or is contrary to public

policy.

112. I am of the view that the impugned interim award does not suffer from any such infirmity. The learned arbitrator has applied his mind to the pleadings, documentary evidence and the surrounding circumstances. He has rendered a reasoned order, giving due consideration to the legal framework governing interim measures and balancing the equities between the parties. The reasoning of the learned arbitrator is not only plausible but firmly rooted in the facts and law.

113. For the said reasons, the impugned interim award dated 16.12.2024 passed by the learned arbitrator under Section 17 of the Act in the arbitration matter titled "*Surgeport Logistics Private Limited & Anr. v. Paul Deepak Rajaratnam & Anr.*" is upheld.

114. Accordingly, the petition is dismissed.

JASMEET SINGH, J

JULY 28, 2025 / *shanvi*